

**REGULAR MEETING MINUTES
CITY COMMISSION**

September 3, 2003

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Jack Quesinberry at 6:00 p.m. in City Hall Commission Chambers. The invocation and Pledge of Allegiance were given.

PRESENT: Mayor Jack Quesinberry, Commissioners John Harriman, Mildred Dixon, and Theo Graham

ABSENT: Commissioner John Rees

Also Present: City Manager Hollis Holden, City Attorney Dykes Everett, Assistant City Attorney Lionel Rubio, City Clerk Kathy Montoya, Assistant to the City Manager Marshall Robertson, Utilities Director Charlie Tinch, Finance Director Mike Bollhoefer (left at 6:12 p.m.), Public Works Director Bob Smith, Police Chief Jimmie Yawn, Trailer City Manager Hughlan Martin, Recreation Director Larry Caskey, Fire Chief John Williamson, and City Planner Mark Cechman

1. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES TO
ADOPT A FINAL MILLAGE AND BUDGET FOR FISCAL YEAR 2003-2004**

A. **Ordinance 03-34:** AN ORDINANCE LEVYING TAX UPON ALL TAXABLE PROPERTY WITHIN THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2003 AND ENDING SEPTEMBER 30, 2004

Assistant City Attorney Rubio read Ordinance 03-34 by title and Section 1 to establish and levy a rate of 4.3040 mills, which exceeds the rolled back rate of 3.9960 mills by 7.71 percent. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 03-34 and schedule the second reading and public hearing for September 17, 2003. Seconded by Commissioner Dixon and carried unanimously 4-0.**

B. **Ordinance 03-35:** AN ORDINANCE APPROPRIATING AND ALLOCATING ALL REVENUE AND FUNDS OF THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2003 AND ENDING ON SEPTEMBER 30, 2004

Assistant City Attorney Rubio read Ordinance 03-35 by title and stated that it is anticipated that the Collection of Ad Valorem will equal \$ 3,779,000 and Revenue other than Ad Valorem will equal \$9,989,593 for a total revenue amount of \$13,768,593. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 03-35 and schedule the second reading and public hearing for September 17, 2003. Seconded by Commissioner Graham and carried unanimously 4-0.**

C. **Ordinance 03-36: AN ORDINANCE APPROPRIATING AND ALLOCATING ALL REVENUE AND FUNDS OF THE COMMUNITY REDEVELOPMENT AGENCY (CRA) OF THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2003 AND ENDING ON SEPTEMBER 30, 2004**

Assistant City Attorney Rubio read Ordinance 03-36 by title and stated that it is anticipated that the collection of Ad Valorem will equal \$191,446 and the Revenue other than Ad Valorem will equal \$329,238 for a total revenue amount of \$520,684. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Graham to approve Ordinance 03-36 and schedule the second reading and public hearing for September 17, 2003. Seconded by Commissioner Dixon and carried unanimously 4-0.**

D. **Ordinance 03-37: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AUTHORIZING THE APPROPRIATIONS OF CITY FUNDS FOR FISCAL YEAR 2003-04 IN ACCORDANCE WITH ARTICLE 3, SECTION 30.4 OF THE CITY CHARTER AND FLORIDA STATUTE 166.241 FOR THE PURPOSE OF FULFILLING THE FINANCIAL OBLIGATIONS OF THE CITY**

Assistant City Attorney Rubio read Ordinance 03-37 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 03-37 and schedule the second reading and public hearing for September 17, 2003. Seconded by Commissioner Dixon and carried unanimously 4-0.**

1. **APPROVAL OF MINUTES**

Minutes of the August 28, 2003, regular meeting and budget workshop were postponed.

At this time, the order of business on the agenda was changed to allow the advertised hearing of Ordinance 03-30 to be heard at 6:30 p.m.

2. **REGULAR BUSINESS**

A. **Request by the Bloom 'N Grow Garden Society to have the annual "Spring Fever in the Garden" festival on Saturday, March 20, 2004**

Mrs. Kay VanderLey stated that she was present to request approval of their annual festival on March 20, 2004. City Manager Holden stated that the request is for approval to close Plant Street downtown for the festival. **Motion by Commissioner Graham to approve the closing of downtown Plant Street for the Spring Fever in the Garden festival on Saturday, March 20, 2004. Seconded by Commissioner Harriman and carried unanimously 4-0.**

B. **Recommendation to approve the Final Plat for Stone Crest Village 6 (Regency Oaks)**

City Planner Cechman stated that the Planning and Zoning Board has reviewed the final plat and recommends approval. Staff has also made a review and recommends

authorizing the Mayor to sign the final plat pending the issuance of a proper title opinion. **Motion by Commissioner Dixon to authorize the Mayor to sign the Regency Oaks Final Plat with staff's recommendations. Seconded by Commissioner Harriman and carried unanimously 4-0.**

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

A. Ordinance 03-28: Small Comprehensive Plan Amendment of 607 Avalon Road (CR 545) to Low Density Residential (Oasis Community Church)

City Manager Holden explained that at the first reading it was announced that the public hearing would be held on September 3, 2003 but needs to be postponed until September 17, 2003. **Motion by Commissioner Graham to POSTPONE the second reading and public hearing of Ordinance 03-28 until September 17, 2003. Seconded by Commissioner Harriman and carried unanimously 4-0.**

B. Ordinance 03-29: Rezoning of 607 Avalon Road (CR545) to R-1 (Oasis Community Church)

City Manager Holden explained that at the first reading it was announced that the public hearing would be held on September 3, 2003 but needs to be postponed until September 17, 2003. **Motion by Commissioner Harriman to POSTPONE the second reading and public hearing of Ordinance 03-29 until September 17, 2003. Seconded by Commissioner Dixon and carried unanimously 4-0.**

Mayor Quesinberry recessed the meeting at 6:12 p.m. and reconvened at 6:30 p.m.

4. FIRST READING OF PROPOSED ORDINANCES

A. Ordinance 03-39: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; VACATING APPROXIMATELY 78 SQUARE FEET OF A 15-FOOT WIDE DRAINAGE EASEMENT LOCATED ON THE EAST SIDE OF LOT 101, BLOCK 9, STONEYBROOK WEST UNIT 4, ALSO KNOWN AS 13945 EYLEWOOD DRIVE; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Everett read Ordinance 03-39 by title only. **Motion by Commissioner Dixon to approve Ordinance 03-39 and to schedule the second reading and public hearing for October 9, 2003. Seconded by Commissioner Harriman.** Commissioner Graham stated that he is a firm believer in larger lots and this is about the third or fourth request to vacate an easement because they do not have enough room for a pool because of an easement. Vacating the easement gives the homeowner additional land that they did not purchase. City Manager Holden stated that in this particular case, the surveyor made the error and that vacating a portion of the easement is not for a pool that is encroaching on the easement. The house itself encroaches by 78 square feet into the drainage easement and therefore, the owner needs to clear the title. **Motion carried unanimously 4-0.**

B. Ordinance 03-30: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 118

(“ZONING”) OF THE WINTER GARDEN CODE OF ORDINANCES, SAID CHAPTER BEING PART OF THE CITY OF WINTER GARDEN LAND DEVELOPMENT CODE, BY CREATING AND ADOPTING UNDER CHAPTER 118, ARTICLE IX, TO BE ENTITLED “WEST STATE ROAD 50 OVERLAY COMMERCIAL DEVELOPMENT STANDARDS”; PROVIDING FOR UNIFORM STANDARDS AND REGULATIONS FOR NEW DEVELOPMENT AND PROPERTIES WHICH UNDERGO SUBSTANTIAL MODIFICATION WITHIN A SPECIFICALLY DESCRIBED AREA OF STATE ROAD 50 WITHIN THE JURISDICTION OF THE CITY OF WINTER GARDEN, FLORIDA; PROVIDING FOR EXEMPTED SIGNS; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP; PROVIDING FOR THE ADOPTION OF DESIGN STANDARDS; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Everett read Ordinance 03-30 by title only. Mayor Quesinberry opened the public hearing.

City Planner Cechman stated that acting upon the City Commission’s direction after the defeat of the State Road 50 ordinance, staff has solicited and received input on the application of development standards to new development on State Road 50. This new Ordinance reflects the City Commission’s direction. As drafted, this Ordinance only applies to new development or substantial redevelopment on State Road 50. The new ordinance excludes existing developed parcels and structures. Staff recommends approval with the second reading and public hearing on September 17, 2003.

The following spoke in opposition of this Ordinance:

Mr. Dean Cannon, Esq., Gray, Harris, & Robinson, 301 E. Pine Street, Suite 1400, Orlando, Florida, stated that he represents a group of property owners who are opposed to this proposed overlay and he encouraged the City Commission not to adopt the Ordinance in its present form. Significant work needs to be done. Workshops need to be held to have some very tough questions answered. Due to the patchwork of different standards along State Road 50, there is inconsistency. This proposed Ordinance was drafted without a single new workshop or public input and it is being rushed through. There are two different philosophies for West State Road 50; one is the City’s and the other is the State Department of Transportation (DOT). The DOT considers State Road 50 as a major east-west highway and they are about to spend millions of dollars to widen the road. The City is now looking at it as an aesthetic gateway to the City and the goal is to make it look better. Those are conflicting goals to make it look pretty and to pump more cars through it. He questioned how the non-conforming Ordinance 03-17 would interface with this Ordinance. For example, if you apply the section that states on page 12 {“Nonconformities not involving the use of a principal structure, e.g., open space storage, building supplies, vehicles, mobile homes, implement and machinery storage, signs, junkyards, commercial animal yards and the like, shall be discontinued within two (2) years from the effective date of the ordinance from which this chapter or amendment to this chapter derives, or, unless otherwise provided for by written agreement or as a condition of annexation, within two (2) years of annexation into the City.”} to the overlay

Ordinance, it is still a two-year non-conforming use period and any signs that don't comply will have to come down in two years, which should be taken into consideration before passing the Ordinance. This Ordinance is not needed, it is premature, it goes far beyond the County's requirements, is vast and complex. The harder it is to comply with an Ordinance, the less inclined the developers will be to build in the City. The Commission should also consider the fact that it is opposed by most of the people affected by the Ordinance. The law of unintended consequences can discourage the annexation of vacant County parcels when the City's standard is higher than the county's. It may discourage development of vacant parcels in the City. For example, on a 3-1/2 acre parcel, half an acre would have to be covered with landscaping or buffers, which is excessive. He stated that he has seen recently that Ocoee is now reconsidering some of their irrigation requirements because it will overuse water. The Orange County Overlay Ordinance for signage will sunset if Winter Garden does not adopt an Ordinance before October 1, but Orange County could just adopt a new overlay.

Ms. Kimberly Rose, 22 1/2 W. Vining Street, Winter Garden, Florida, stated that she is appalled that she has to appear again before the Commission to repeat that she doesn't want it. The Ordinance started out 15 pages and is now 49 and she doesn't believe it is right for the Commission to vote on an Ordinance they don't understand. For example, there is a provision within the Ordinance that states there will be no cart corrals in the middle of the parking lot unless it has walls around it or bushes that are a foot taller than the carts and she doesn't want to walk by them for safety reasons. The landscaping requirements will block a driver's view. She stated that she is not in favor of grandfathering as some are on their Committee against the overlay. It appears to her that the property owner will have to provide bus stop shelters. She stated her concern about a West Orange Times article this week that implied that there may have been a violation of the Sunshine Laws by the City Manager when he polled the City Commission and replied that they didn't have a problem with this Ordinance or he was misquoted or what he said was taken out of context, but she is not accusing him of anything. She stated she is against the proposed Ordinance.

Mr. Gerald Jowers, 235 N. Lakeview Ave., Winter Garden, Florida, stated that he has read the entire Ordinance and the grandfathering aspect is an important part because it will allow an owner to replace what they already have. He asked the Commission to consider the act of God aspect, because there is no provision that will allow him to rebuild what he has. Signage is the only issue in the County's Ordinance that will sunset, so why must the City rush into this Ordinance. Merchants don't mind beautifying their businesses. This Ordinance only serves the City and County, not their constituents.

Mr. Doug Doudney, 824 N. Highland, Orlando, Florida, stated that the main objective of the County Ordinance is to provide for uniform standards in the West 50 Overlay District with other cities and it is only six pages, whereas the City's is 45 pages and therefore cannot be uniform. All over the country, signage provisions for pole signs are becoming illegal and monument signs are the new standard. As far as the landscaping requirements are concerned, yes, you can tell them what to plant but you cannot require them to water the plants. The standards are a disaster and include color and lighting restrictions,

landscaping, signage, prohibiting of flags, balloons, and streamers. He recommended that the City create standards that fit everybody.

Ms. Shirley Smith, 21 W. Crest Avenue, Winter Garden, Florida, asked how traffic can be kept moving with the 60-70% population that is 60-70 years old, who are slowing to look for the 12-foot high monument signs. To comply with this Ordinance will be too costly at approximately \$60,000 to \$600,000. Taking 25 feet of depth from her property at the corner of SR 50 and Beulah Road is wrong and will cost her about \$200,000.

Ms. Pam Phillips, 535 N. Main Street, Winter Garden, Florida, stated that the City should embrace the owners, as they have been here a long time. Why rush these requirements and prevent them from staying in business? Why is it all or nothing? Let's make it benefit both and look at a different path.

Mr. Bill Curtis, Esq., 2963 DuPont Avenue, Suite 3, Jacksonville, Florida, stated that the purpose of the Ordinance is for beautification, but it goes too far. It does not meet its objective to beautify a continuous strip of Highway 50 because the County enclaves will still be there and there will be grandfathered properties that do not have to comply. He asked the Commission to respect their constituents and not pass the Ordinance that will not accomplish its stated objective. The grandfathering clause is missing a provision for acts of God. The grandfather clause is ineffective in the inevitable case of eminent domain power by FDOT and the City of Winter Garden, which will trigger the application of this Ordinance. He asked the Commission to wait and see what beautification the DOT can accomplish and what impact the eminent domain process will have on this ordinance and allow for compensation to the property owners when the grandfather clause is rendered ineffective.

The following spoke in favor of this Ordinance:

Mr. Dana Bennett, 2303 Tuscarora, Maitland, Florida, stated that he is the Division President of M/I Homes that has developed in Winter Garden for the past 10 years and has invested approximately \$85 million in the community. What he is hearing concerns him because it brings back memories of Orange Blossom Trail when he arrived in 1987. Since that time, the cities and county have worked together to improve that area and the property values have gone up. This Ordinance is tough for a lot of people, but it is for the good of the City to beautify SR50 and just because it is a highway, it doesn't mean that we can't beautify or regulate it so it is easier to move through the area.

Mr. Derek Blakeslee, 230 N. Highland Avenue, Winter Garden, Florida, stated that an Ordinance needs to be passed, but it just may not be this one. At a minimum, we have to agree with Orange County and stop the enclaves. We need to keep up with the surrounding communities, as we cannot afford to be the blighted area. We do not need to hurt the small businesses. It sounds like we may have overstepped what people are looking for in the beautification process, but we have to have something in order to be a part of the greater community and clean up Highway 50.

Mr. Randy June, 12201 Oyen Court, Winter Garden, Florida, stated that the City needs to make sure we are moving towards something in the way of an Ordinance to clean up SR 50 and be proud of it.

Written correspondence was received from Glynwood Homeowners Association, Inc. and Manheim's Florida Auto Auction in favor of the Ordinance.

Hearing no other comments, Mayor Quesinberry closed the public hearing.

City Attorney Everett stated that he wanted to clarify an allegation made of a Sunshine Law violation. It is not a violation in the State of Florida for the City Manager to speak individually with City Commissioners. Also, there have been questions about the non-conforming Ordinance in relationship to this Ordinance. As this Ordinance is written, with its exclusion of existing developed properties, it does not therefore apply to those properties at the time of passage. This Ordinance would not render those properties non-conforming. It specifically excludes those properties from the operation of the Ordinance until certain future events happen. With regards to the issue of non-conforming and signage, there is a specific provision in this Ordinance under Section 118.1431(d) concerning conflict that expressly provides that the least restrictive provisions regarding signage will control in the event of a conflict. Therefore, the compatibility of the two Ordinances has been addressed and he does not see any apparent conflict or overriding operation of the recent non-conforming Ordinance relative to this Ordinance.

City Manager Holden stated the he wanted to comment on some statements made. First, he does not poll the Commissioners. The newspaper asked him what he thought the chances were of the Ordinance passing and he stated he hoped it passes because he has not had any questions from any of the three Commissioners who voted against it. He has not discussed this Ordinance with any one of those Commissioners. There were comments made about vacant county properties that would not annex into the City because of this Ordinance. Of the 29 county properties within the City's JPA, only one is partially vacant. Therefore, there are no vacant county enclaves. Of the 121 parcels affected by this Ordinance, 32 are vacant, 7 are owned by what we believe are local addresses. Of the 121 properties, 26 are local resident addressed owners of which 6 are duplicate owners, so there are 20 that are locally owned. All vacant property to be developed is already in the city. A reference was also made about the size of this Ordinance versus the County Ordinance. The County's Ordinance implements numerous other sections of the Orange County's Code titled "The Orange County Commercial Design Standards" Ordinance 2000-114 that is not included with their 6 pages and that is why Winter Garden's is larger.

Motion by Commissioner Harriman to approve Ordinance 03-30 with the second reading and public hearing on September 17, 2003. Seconded by Mayor Quesinberry.

Commissioner Dixon stated that she understands and has empathy with those on Highway 50. When she looks at Highway 50 and the surrounding areas, she realizes that

Winter Garden has to do something. She believes that those affected should have come forward with a plan of what they wanted. She knows we have to have an Ordinance and she does not believe that we have to do everything that the County does.

Commissioner Graham stated that he favors the grandfathering section and he would also like to see a provision for acts of God that would allow someone having a roof or sign blown down to replace it as it was. He believes that new businesses with the new standards will influence the existing businesses to make improvements. We may lose small business because of the higher standards, but at least the standards will be made upfront and they can make their decision accordingly.

Motion carried unanimously 4-0.

5. MATTERS OF CONCERN FROM CITIZENS: None

6. MATTERS FROM CITY ATTORNEY DYKES EVERETT:

Reminded the Commission that the process does not end if Ordinance 03-30 is adopted because they will have the ability to observe the Ordinance in operation and have the option of making improvements to it in the future.

7. MATTERS FROM CITY MANAGER HOLLIS HOLDEN:

Stated that in addition to what the City Attorney has said, the St. Johns River Water Management District is working on a landscaping guide for selecting water-friendly plants that staff will look at for incorporating into our standards.

8. MATTERS FROM MAYOR AND COMMISSIONERS:

Commissioner Dixon:

Stated that she is looking at alternate methods to fund the Maxey Center computer training room and she was insulted at the last Commission meeting that her fellow Commissioners who have approved other funding requests, would not approve her request. She intends to check City records for the funds.

Announced that she will become the new President of the West Orange National Association for the Advancement of Colored People. She will be involved in saving the youth and with the scholarship program and she will be coming to the City with more donation requests.

Mayor Quesinberry:

Invited all to attend the ballgame this Saturday, September 6, at 9:00 a.m. at the Winter Garden Sports Complex.

The meeting was adjourned at 7:54 p.m.